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No. 03-1060

In The Supreme Court of the United States

PATRICIA WILLIAMS, TERRI L. WATKINS,

Petitioners,

v.

GALVESTON INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

Respondent Galveston Independent School District ("GISD") accepts the description of Parties to the Proceeding, the Opinions Below, the Basis for Supreme Court Jurisdiction, and the Constitutional and Statutory Provisions Involved as stated by Petitioners in their Petition for a Writ of Certiorari.

GISD supplements the Statement of the Case in the following section.

COUNTERSTATEMENT OF THE CASE

Factual Background

A number of Galveston Independent School District administrators are placed on an "Exempt and Administrative Pay Schedule." These administrators are classified in various pay grades, with the highest level being pay grade 8. There were four employees in that pay grade.

The Texas comptroller's office implemented an audit program to recommend ways in which Texas school districts could save money and improve their performance in educating students. GISD participated in the new program. After the audit, the comptroller's report recommended the elimination of certain GISD positions, and the creation of others. The comptroller's report also concluded that GISD was not paying its employees at market rates. The report therefore recommended the school district implement a program to raise salaries to market rates, with priority to those positions most below the market.

The school district's superintendent determined that a study of current administrator's salaries was needed in

order to determine how to bring GISD's administrative salaries to market level. After review of a salary study, administrators in pay grade 8 received market adjustments and cost of living adjustments to their salaries, or only cost of living adjustments only if their salaries were already at market. As a result of this "market adjustment" process, there were salary differences among the four grade 8 employees.

Dr. Williams and Ms. Watkins are both directors with GISD and in pay grade 8. The other two grade 8 employees are the chief financial officer, responsible for all financial functions and non-instructional functions, and the assistant superintendent for curriculum and instruction, responsible for all instructional areas. Dr. Williams and Ms. Watkins claim the salary differences between themselves and the two other grade 8 employees are motivated by race.

Dr. Williams is the executive director of employee and community relations. She handles employee relations, including grievances. Dr. Williams has one person, her secretary, who reports directly to her. The budget for her department was $118,312.

Ms. Watkins is the executive director of human resources. Ms. Watkins' primary responsibility is the recruitment and hiring of teachers, certified personnel, teacher's aides, and other instructional-related positions. Ms. Watkins has five employees who report directly to her. The human resource department budget was $287,802.

Paul McLarty, a white male, was the chief financial officer. Mr. McLarty was responsible for the GISD budget of some $54 million in the general fund, plus special funds of some $13 million. As chief financial officer, Mr. McLarty

oversaw the maintenance and operations, transportation, food service, athletics, purchasing, and finance departments, which have some 350 employees. The chief financial officer also manages GISD's real property and is responsible for conducting district elections. Mr. McLarty had six directors that reported directly to him.

The other pay grade 8 employee, E. J. Garcia, was assistant superintendent for curriculum and instruction. Ms. Garcia, a white female, was responsible for all of the educational programs in the district. She also provided and implemented instructional programs with teachers and principals, developed curriculum, and provided teacher professional development. Eight directors, five teaching assistants, and a grant's writer reported directly to Ms. Garcia. In addition to these responsibilities, Ms. Garcia assisted the superintendent with supervision of all principals and assistant principals and accepted the responsibilities of the superintendent when the superintendent was away from GISD. Ms. Garcia oversaw a budget in excess of some $13 million in local, state, federal and grant money. Many of her responsibilities were related to requirements imposed on the district by state and federal education laws, including testing related to the Texas accountability system, bilingual and special education, and state-mandated curriculum.

To support her claim of unequal pay, Dr. Williams compared her responsibilities to those of Ms. Garcia and Mr. McLarty. Ms. Watkins compared her responsibilities to those of Mr. McLarty only.

Dr. Williams agreed that the job descriptions for her job, and that of Mr. McLarty or Ms. Garcia, were "different." Dr. Williams also agreed that she did not supervise

the number of people or departments that Mr. McLarty and Ms. Garcia did, and she acknowledged the budgets were not comparable.

Ms. Watkins, too, admitted the "design of the organization" was such that she did not have a similar level of supervision and responsibility as the chief financial officer position. Watkins conceded her job and the job of assistant superintendant of curriculum had different duties, different responsibilities, and different levels of supervision.

Lower Courts' Analysis

Dr. Williams filed suit against the GISD based on the Civil Rights Act of 1866, 42 U.S.C. § 1981. Ms. Watkins later joined the litigation as plaintiff. Thereafter GISD moved for summary judgment, contending that Dr. Williams and Ms. Watkins could not prove a prima facie case of racial discrimination under section 1981 as to any salary differences.

The district court granted summary judgment, holding Dr. Williams and Ms. Watkins could not make a prima facie case of discriminatory compensation because their positions were not substantially similar in responsibilities to either of the other two employees in pay grade 8. Additionally, even though plaintiffs did not make out a prima facie case, the court concluded GISD's reasons for the salary differences were legitimate, nondiscriminatory, and not pretextual. Specifically, the court found that the school district had made salary adjustments to the pay grade 8 employees in response to recommendations of the Texas comptroller, and guided by the salary study. (Pet. App. 23, 26).

The Fifth Circuit Court of Appeals affirmed the summary judgment. The court determined the relevant job descriptions demonstrated that the four grade 8 positions differ in many respects. The court of appeals held that not only were job responsibilities dissimilar in substance, but the scope of their authority over funds and employees differed. The court held the job differences "fatally undercut" Dr. Williams and Ms. Watkins' claims for discriminatory compensation. (Pet. App. 7).

REASONS FOR DENYING THE PETITION

The elements of a prima facie case of employment discrimination alleging disparate treatment under Title VII and 42 U.S.C. § 1981 are identical. Therefore, facts that preclude relief under Title VII also preclude a Section 1981 claim. *Garcia v. Gloor*, 618 F.2d 264, 271 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981).

The Equal Pay Act provides, in relevant part:

> No employer having employees subject to any of the provisions of this section shall discriminate . . . between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment . . . except where such payment is made pursuant to . . . a differential based on any other factor other than sex.

29 U.S.C. § 206(d)(1).

Dr. Williams and Ms. Watkins contend the court of appeals erred in holding them to an "equal work" standard of the Equal Pay Act. *See* Petition at 9. But as set out in

their brief to the court of appeals, Dr. Williams and Ms. Watkins contended that one issue before the appellate court was "what weight to be given to evidence in determining if Appellants have shown discriminatory compensation as compared to a similarly situated employee who performs work requiring substantially the same responsibility." Appellants' Brief at 2. Dr. Williams and Ms. Watkins also asserted that the district court had erred "in not equating the job responsibilities of Dr. Williams and Ms. Watkins as being on par with that of Ms. Garcia and Mr. McLarty; i.e. [sic] work requiring substantially the same responsibility." Appellants' Brief at 18. This case, therefore, is a classic case of alleged unequal pay for equal work.

Thus, while Dr. Williams and Ms. Watkins brought this case as a Section 1981 claim, the Equal Pay Act framed it. It is well settled among the lower courts that the standards of the Equal Pay Act are applicable to charges of sex or race based discrimination in compensation under Title VII and section 1981. *Cullen v. Ind. Univ. Bd. of Trs.*, 338 F.3d 693 (7th Cir. 2003); *Buettner v. Eastern Arch Coal Sales Co., Inc.*, 216 F.3d 707, 718-19 (8th Cir. 2000); *Shultz v. Wheaton Glass Co.*, 421 F.2d 259 (3rd Cir. 1970). Thus in *McKee v. Bi-State Dev. Agency*, 801 F.2d 1014 (8th Cir. 1986), the court stated that "where a claim is for unequal pay for equal work based upon sex, the standards of the Equal Pay Act apply whether the suit alleges a violation of the Equal Pay Act or Title VII." *Id.* at 1019.

The court of appeals' decision below rests on a proper application of this law and does not conflict with any decision of this Court or any other court of appeals. Review is therefore not warranted.

1. The Fifth Circuit held Petitioners to the proper standard

To establish a prima facie case of pay discrimination under Title VII, the court of appeals held Dr. Williams and Ms. Watkins to the following showing: (1) they were members of a protected class, and (2) they were paid less than a nonmember for work that required substantially the same responsibility. *Uviedo v. Steves Sash & Door Co.*, 738 F.2d 1425, 1431 (5th Cir. 1984). This standard is not materially different from the Equal Pay Act standard.

Corning Glass Works v. Brennan, 417 U.S. 188 (1974) is the leading case interpreting the Equal Pay Act. The Court stated that a prima facie case under the act is established if the plaintiff can show: (1) that an employer is paying different wages to employees of the opposite sex; (2) that the employees are performing jobs which require equal skill, effort, and responsibility; and (3) that the employees have similar working conditions. *Id.* at 190.

The Equal Pay Act only requires that a plaintiff demonstrate that two jobs are "substantially equal" as to the requisite skill, effort, and responsibility. *Usery v. Columbia University*, 568 F.2d 953, 958 (2d Cir. 1977).

Both lower courts held that the summary judgment evidence did not establish the second element of a prima facie claim, since Dr. Williams and Ms. Watkins' positions were not substantially similar to the other two employees. This was not an inappropriate application of the Equal Pay Act to this section 1981 case, but a proper one.

Dr. Williams and Ms. Watkins claim this analysis "runs afoul" of *County of Washington v. Gunther*, 452 U.S. 161 (1981). Petition at 8. Nothing in that decision changes

the result or analysis here. In *Gunther* the Court held that the Bennett Amendment to Title VII, which prohibits sex-based wage discrimination claims where the pay differential in question is authorized by the Equal Pay Act, effectively incorporates into Title VII the Equal Pay Act's affirmative defenses.

Gunther also teaches that Title VII covers types of wage discrimination not actionable under the Equal Pay Act, including disparate impact claims. Thus, "even absent a showing of equal work, there is a cause of action under Title VII when there is direct evidence that an employer intentionally depressed a woman's salary because she is a woman." *Id.* at 204 (Rehnquist, J., dissenting). "Therefore, an act or practice of an employer or labor organization that is not a violation of the EPA may nevertheless be a violation of title VII." 29 C.F.R. § 1620.27.

In fact the issue raised by Petitioners is answered by the Court's affirmance of the Ninth Circuit in *Gunther*. There the court of appeals held that "a plaintiff is not precluded from establishing sex-based wage discrimination under some other theory [than substantial equality] compatible with Title VII." *Gunther*, 623 F.2d 1303, 1321 (9th Cir. 1979). This case, however, was not about "wage discrimination under some other theory than substantial equality." *Id.* Dr. Williams and Ms. Watkins alleged that they were paid less than two similarly situated employees. The district court held that Dr. Williams and Ms. Watkins did not show that their positions were substantially similar to those two positions. (Pet. App. 16-20). And the court of appeals held that Dr. Williams and Ms. Watkins' positions, and the positions of Mr. McLarty and Ms. Garcia, were "too dissimilar to facilitate comparison." (Pet. App. 8).

The Fifth Circuit held that "[if] a plaintiff's job responsibilities are significantly different from the responsibilities of employees she cites as a point of comparison, then the plaintiff has not made out a prima facie case." The court added that in considering whether two jobs require substantially the same responsibility, it looks at the jobs' duties, "including the jobs' relative supervisory authority and responsibility for revenue." (Pet. App. 6). This analysis was consistent with *Gunther*, and with later cases in other courts of appeals. Thus the court in *Cullen v. Ind. Univ. Bd. of Trs.*, 338 F.3d 693 (7th Cir. 2003) held that evidence dispositive of an Equal Pay Act claim was also dispositive of a Title VII claim. *Id.* at 703.

The factors the courts below considered were appropriate. The court in *Cullen* held that management of a department twice the size of another was "indicative of greater responsibility." *Id.* at 700. In *Howard v. Lear Corp. Eeds & Interiors*, 234 F.3d 1002, 1005 (7th Cir. 2000) the court observed the "additional skill, effort, and headache involved in managing three to six times the number of workers in a more complex employment environment" made positions substantially different. Likewise, in *Orahood v. Board of Tr. of Univ. of Arkansas*, 645 F.2d 651, 655 (8th Cir. 1981) the court of appeals affirmed a finding of not substantially similar positions because a male employee supervised a much larger department with more employees. In *Strag v. Board of Trustees*, 55 F.3d 443 (4th Cir. 1995) the court rejected a comparison between a female mathematics teacher and a male biology teacher because the mathematics and biology departments required different skills and responsibilities. And in *Stanley v. University of Southern California*, 13 F.3d 1313 (9th Cir. 1994) the court held the jobs of male and female basketball

coaches could not be compared as "substantially equal" because the male coach had more responsibilities, more experience, and more experience in public relations.

The Equal Pay Act requires only "substantially" equal work. This standard does not materially differ from the prima facie case under Title VII considering "work that required substantially the same responsibility." The court of appeals therefore did not err in its prima facie analysis.

2. There is no conflict as to the prima facie standard that demands review or correction

In their second question presented, Dr. Williams and Ms. Watkins contend there is no definitive standard in the wage discrimination context, leading to inconsistent and unjust results. Petition at 14.

Whether there is a "definitive standard," the application in the lower courts of the Equal Pay Act standards to Title VII and section 1981 is not in tension.

This Court has stated that certiorari should not be granted "except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). The decisions Dr. Williams and Ms. Watkins cite do not establish a real and unjust conflict among the courts as to the prima facie standard. Moreover, this Court has explained that the "precise requirements of a prima facie case can vary depending on the context and were 'never intended to be rigid, mechanized, or ritualistic.'" *Swierkiewicz v.*

Sorema N.A., 534 U.S. 506 (2002), citing *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978).

3. The outcome in this case would not be different

Review is also not warranted because a refinement of the prima facie case would have made no difference in the outcome. Even if Dr. Williams and Ms. Watkins had prevailed in establishing a prima facie case, the district court nevertheless concluded that GISD had established a nondiscriminatory, not pretextual reason for the pay differences. (Pet. App. 26-27).

In making the determination to increase the salaries of some in pay grade 8 GISD relied on a third party's independent audit and the conclusions that followed from that review. In determining the amounts of the salary increases, GISD relied on market value and market studies. The discrimination laws do not interfere with business decisions such as these. *E.g.*, *Scaria v. Rubin*, 117 F.3d 652, 655 (2d Cir. 1997) (per curiam) (federal courts hearing discrimination claims do not "sit as a super-personnel department").

CONCLUSION

Respondent Galveston Independent School District prays that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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